

Policy on Suspension and Termination

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Purpose

This policy (the “Policy”) describes the process and procedures the Millennium Challenge Corporation (MCC) will follow regarding suspension and termination.

Scope

This Policy prescribes the actions for suspension and termination of all forms of Millennium Challenge Account (MCA) assistance and eligibility for assistance under the Millennium Challenge Act of 2003, as amended (22 U.S.C. 7701, *et seq.*) (the “Act”). This Policy also describes a range of executive actions that the CEO may take, short of suspension or termination, that are appropriate responses to specific circumstances or emerging events.

Authorities

Acts

1. Section 611(a) of the Act provides that, after consultation with MCC’s Board of Directors (Board), the chief executive officer (CEO) may suspend or terminate assistance in whole or in part for an MCA-eligible country, if the CEO determines that (1) the country is engaged in activities which are contrary to the national security interests of the United States; (2) the country has engaged in a pattern of actions inconsistent with the criteria used to determine the eligibility of the country; or (3) the country has failed to adhere to its responsibilities under its Compact.

Although the requirements of section 611(a) of the Act do not explicitly apply to assistance under section 609(g) of the Act or to assistance under section 616 of the Act (known as threshold program assistance), the requirements of section 611(a) of the Act are extended to such assistance by virtue of this Policy.

Other Policies

1. Basic Board function and procedures are codified more broadly in MCC’s *Policy on Board Governance*.

Key Definitions

Assistance

This Policy applies to three types of assistance: (i) assistance under a Compact; (ii) assistance provided under section 609(g) of the Act to facilitate the development and implementation of a Compact; and (iii) assistance provided under section 616 of the Act (threshold program assistance).

Consultation with Board

Consultation with the Board may occur directly between the CEO and Board members in person, in writing, or through telecommunications. It may also be conducted through formally designated representatives in case of absence or unavailability of a Board member.

Executive Actions

In addition to suspension or termination of eligibility for Assistance and suspension or termination of Assistance, the CEO may take any steps that it deems necessary to (i) determine the existence of any of the three categories set out in Section 5.1, (ii) communicate concern and/or (iii) respond to one or more events, or a significant policy reversal, i.e., a pattern of actions that appears to be inconsistent with the eligibility criteria. Any such steps may precede other actions contemplated by this Policy, but need not lead to further actions. In difficult cases, it may not be possible to know immediately whether one or more triggering actions or events falls into one of the three categories set out in Section 5.1, and the CEO may initiate agency responses to inquire further, to communicate concern regarding the emerging situation, and to exercise appropriate lesser remedies available to MCC.

Suspension of Assistance

Action to suspend Assistance, in full or in part, may be taken when MCC determines that one or more triggering actions or events have occurred that falls into one of the three categories set out in Section 5.1. A suspension of Assistance may be reinstated using the processes described in Section 6.2.5.

Suspension or Termination of Eligibility for Assistance

Action to suspend or terminate eligibility for Assistance may be taken when MCC determines that an eligible country that is not yet receiving Assistance should no longer be considered eligible to receive Assistance because one or more triggering actions or events has occurred that falls into one of the three categories set out in Section 5.1. A suspension of eligibility for Assistance may be reinstated using the process described in Section 6.2.5.

Termination of Assistance

Action to terminate Assistance may be taken when MCC determines that one or more triggering actions or events have occurred that falls into one of the three categories set out in Section 5.1. A decision to terminate Assistance may be preceded by a period of suspension of Assistance.

< h2>Policies

MCC distinguishes suspension and termination of Assistance from a decision by MCC management to withhold some or all of a particular disbursement or other operational decision required under agreements between MCC and the country regarding such Assistance. Disbursement and other administrative actions are subject to conditions precedent and other operating requirements in Compacts and other implementation-related agreements. A decision by MCC management to not disburse, to defer disbursement, or to take other action is neither a suspension nor a termination of Assistance.

Basis for Suspension or Termination, and for Other Executive Actions

The CEO may take Executive Action or make a recommendation to the Board to suspend or terminate Assistance, or terminate eligibility for Assistance, under the following circumstances:

The Country Has Engaged in Activities Contrary to the National Security Interests of the United States.

For the purposes of this Policy, a country is deemed to have engaged in “activities contrary to the national security interests of the United States” when a formal determination to that effect has been made by the U.S. Government (*i.e.*, by the President or the Secretary of State).

The Country Has Engaged in a Pattern of Actions Inconsistent with MCA Eligibility Criteria.

For the purposes of this Policy, a country can be deemed to have engaged in “a pattern of actions inconsistent with the criteria used to determine eligibility of the country” if the country has taken actions that result in, or could reasonably be expected to result in, a policy reversal, a decline, or a deterioration of performance, in one or more of the policy indicators used to determine eligibility, as published by MCC in accordance with section 608(b) of the Act. Such actions may be evidenced by, among other things:

- A decline in performance on the indicators used to determine eligibility;
- A decline in performance not yet reflected in the indicators used to determine eligibility; or
- Actions by the country which are determined to be contrary to sound performance in the areas assessed for eligibility for Assistance, and which together evidence an overall decline in the country’s commitment to the eligibility criteria.

The Country Has Failed to Adhere to Its Responsibilities Under a Compact, 609(g) Grant Agreement, Threshold Program or Related Agreement.

For the purposes of this Policy, “failure to adhere to its responsibilities” under a Compact, 609(g) grant agreement, threshold program or related agreement may be evidenced if the country:

- Materially breaches any assurance or obligation in the agreement (or any related implementing agreement or document);
- Fails to meet a key condition precedent or series of conditions precedent to one or more disbursements; or
- Takes (or fails to take) some action that results in grounds for termination or suspension as set out in the Compact or relevant agreement (*e.g.*, a failure to comply with any reporting, certification, or audit requirement through which MCC will monitor adherence of a country to its responsibilities under the relevant agreement).

Procedures and Timing

Decision Procedures

MCC relies on the following procedures in response to any of the bases as described in Section 5.1:

Activities Contrary to the National Security Interests of the United States.

Action may be triggered by either a formal determination by the U.S. Government (*i.e.*, by the President or Secretary of State) that a country has engaged in activities contrary to the national security interests of the United States, or by a recommendation to MCC by another element of the U.S. Government (including by the National Security Council or the U.S. Department of State) to take action vis-à-vis a country's eligibility for Assistance; the CEO will make a recommendation to the Board after learning of such determination or receiving such recommendation. Following a Board decision, the CEO will take any necessary action, which may include suspension or termination of eligibility for Assistance or full or partial suspension or termination of Assistance.

Pattern of Actions Inconsistent with MCA Eligibility Criteria.

If there is evidence of a pattern of actions inconsistent with the eligibility criteria that present potentially sufficient grounds for suspension or termination, appropriate MCC staff will present a situation report and/or options to the committee responsible for advising the CEO on potential and existing MCC investments. The CEO will determine whether the facts warrant action, or, alternatively, direct appropriate MCC staff to conduct further inquiry or advise another agency response. If the CEO determines that suspension or termination is warranted, the CEO will make a recommendation to the Board and, following a Board decision, take necessary action.

Failure to Adhere to Responsibilities under a Compact, 609(g) Grant Agreement, Threshold Program Agreement or Related Agreement.

If there is concern that a country has failed to adhere to its responsibilities under a Compact, 609(g) grant agreement, threshold program or related agreement, or that grounds for action may have occurred, appropriate MCC staff will present a situation report and/or options to the committee responsible for advising the CEO on potential and existing MCC investments. The CEO will determine whether the facts warrant action or, alternatively, direct appropriate MCC staff to conduct further inquiry or advise another agency response. If the CEO determines that suspension or termination is warranted, the CEO will make a recommendation to the Board and, following a Board decision, take necessary action.

Consideration of Existing Policies and Operational Commitments.

MCC's response to any of the triggering actions or events described above will take into consideration existing policies and agency commitments, including a consideration of the impact on beneficiaries of the Assistance, consistency with MCC's model, and MCC's ability to induce compliance with MCC operational policies.

Action Procedures

Formal Warning

Among other Executive Actions, the CEO may issue a formal warning in writing to the head of state or government of a country, citing generally or specifically the actions or decisions that have put the country at risk of suspension or termination of Assistance or eligibility for Assistance. The CEO will consult with Board members prior to issuing a formal warning and will inform the Board after any such warning is given.

Suspension

If the Board, upon the recommendation of the CEO, makes a determination to fully or partially suspend Assistance or eligibility for Assistance, the CEO will notify the country, in writing, of such suspension. This notification will identify (i) the reason(s) for the suspension, (ii) the term of the suspension, if any, and (iii) the type of action, if any, required for reinstatement. Assistance or ongoing negotiations for Assistance will be suspended as of the date specified.

Termination

If the Board, upon the recommendation of the CEO, makes a determination to fully or partially terminate Assistance or eligibility for Assistance, the CEO will notify the country in writing of such termination, identifying the specific reason(s) for the termination. Once terminated, a Compact, 609(g) grant agreement or threshold program may no longer be implemented with MCC funding.

Reinstatement

The Board may reinstate Assistance or eligibility for Assistance for a country that was suspended or terminated, upon the recommendation of the CEO that the country has taken corrective action or has demonstrated a sufficient commitment to correcting each condition for which Assistance was suspended or terminated. If the Board, upon the recommendation of the CEO, makes a determination to reinstate Assistance or eligibility for Assistance, the CEO will notify the country in writing. To reinstate Assistance or eligibility for Assistance that has been suspended, appropriate MCC staff will present a situation report and/or options to the committee responsible for advising the CEO on potential and existing MCC investments. The CEO will determine whether the facts warrant further reinstatement actions.

Congressional Notification

MCC will notify Congress in writing by submitting a report detailing the cause for suspension or termination of Assistance or eligibility for Assistance, or reinstatement, in accordance with statutory requirements.

Timing

The effective date of suspension, termination, or reinstatement decisions is subject to consideration of relevant law, MCC consultations, and consistency with other MCC policies and procedures.